

# **Rules of Procedure for Fee Arbitrations and the Enforcement of Awards by the State Bar of California**

(Adopted by the Board of Governors on January 26, 1991; amended July 13, 1991; amended July 11, 1992; amended March 6, 1993; amended May 14, 1994; amended December 10, 1994; amended December 6, 1999.)

## **ARTICLE I DEFINITIONS**

### **RULE 1.0. Definitions.**

As used in this chapter:

- 1.1 **ARBITRATION PACKET:** Packet of materials including instructions, forms and information for requesting fee arbitration.
- 1.2 **ASSIGNEE:** A person to whom a claim, right or property is transferred. Often, an attorney appoints a collection agency as an assignee for a particular debt.
- 1.3 **PRESIDING ARBITRATOR:** The person responsible for supervising arbitrators hearing State Bar mandatory fee arbitration cases.
- 1.4 **ASSISTANT PRESIDING ARBITRATOR:** The person who acts in place of the Presiding Arbitrator when s/he is not available or is unable to perform the required duties.
- 1.5 **HEARING PANEL:** One or three arbitrators assigned to hear the fee dispute and to issue the award.
- 1.6 **ATTORNEY-CLIENT PRIVILEGE:** Confidential communications between lawyer and client which may be protected from disclosure.
- 1.7 **AWARD:** The arbitrator's decision in the fee arbitration proceeding.
- 1.8 **CLIENT:** A person who directly or through an authorized representative consults, retains or secures legal service or advice from a lawyer in the lawyer's professional capacity.
- 1.9 **FILE:** State Bar fee arbitration records and papers in a specific case.
- 1.10 **DIRECTOR:** The staff person responsible for administering the State Bar Mandatory Fee Arbitration Program.
- 1.11 **WITH PREJUDICE:** An action taken that is final (e.g. dismissal, no new request to arbitrate may be filed).
- 1.12 **WITHOUT PREJUDICE:** An action or order (e.g. dismissal) that does not forbid the party from beginning the activity again (filing a new request for arbitration).
- 1.13 **COMMITTEE ON MANDATORY FEE ARBITRATION:** The State Bar committee responsible for initial policy oversight of the State Bar Fee Arbitration Program.

## **ARTICLE II ARBITRATION GENERALLY**

### **RULE 2.0. Arbitration Mandatory For Attorneys.**

Arbitration under Business and Professions Code §§6200-6206 is voluntary for a client and mandatory for an attorney if commenced by a client.

### **RULE 3.0. Attorney's Failure To Respond Or Participate.**

If an attorney fails to respond to a request for arbitration or refuses to participate, the arbitration will proceed as scheduled and a decision will be made on the basis of the evidence presented.

### **RULE 4.0. Notice.**

Prior to or at the time of service of summons or claim in an action against the client for the recovery of fees, costs or both for professional services rendered, the attorney shall forward to the client the approved State Bar form entitled "Notice of Client's Right to Arbitration." Failure to give this notice shall be a ground for dismissal of the action.

### **RULE 5.0. Disputes Covered.**

Disputes concerning fees, costs, or both charged for professional services by an attorney are subject to arbitration under these rules, except for:

- 5.1 disputes where the attorney is also admitted to practice in another jurisdiction or where the attorney is only admitted to practice in another jurisdiction, and s/he maintains no office in the State of California, and no material portion of the services were rendered in the State of California;
- 5.2 disputes where the client seeks affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;
- 5.3 disputes where the fees and/or costs to be paid by the client or on the client's behalf have been determined pursuant to statute or court order; or
- 5.4 disputes where the request for arbitration is made by a person who is not the client of the attorney.

### **RULE 6.0. Binding Arbitration.**

- 6.1 Arbitration is not binding unless all parties agree in writing that it will be binding. If any party does not agree, any party may request a trial after arbitration in a civil court pursuant to Business and Professions Code section 6204 within thirty (30) days after the arbitration award has been mailed. If a trial after arbitration is not requested, the award automatically becomes binding thirty (30) days after the award is mailed, except that if any party willfully fails to appear at the hearing as provided for under these rules, that party shall not be entitled to a trial after arbitration. The decision as to whether the

non-appearance was willful will be made by the court. The party who failed to appear at the hearing shall have the burden of proving that the failure to appear was not willful.

If all parties agree in writing that the arbitration is binding, the award is binding and there can be no appeal in a civil court. A binding award may be corrected, vacated or confirmed pursuant to Code of Civil Procedure section 1285 et seq.

- 6.2 At any time prior to the actual taking of evidence at the hearing, the parties may agree in writing to be bound by the award. After all parties have agreed in writing to be bound by an arbitration award, a party may not withdraw from that agreement.

**RULE 7.0. Right To Counsel.**

Either party, at his/her own expense, may be represented by an attorney.

**RULE 8.0. Waiver Of Right To Request Or Maintain Arbitration.**

A client's right to request or maintain arbitration is waived if the client:

- 8.1 answers a complaint in a civil action before filing a request for arbitration, if a notice of the right to arbitrate was given pursuant to rule 4.0;
- 8.2 commences an action or files any pleading seeking judicial resolution of a fee and/or cost dispute or seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;
- 8.3 fails to send to the State Bar a written request for arbitration that is postmarked on or before the 30th day from receipt of the form entitled "Notice of Client's Right to Arbitration" given pursuant to Rule 4.0; or
- 8.4 fails to send to the State Bar a request for arbitration on the approved State Bar form that is:
- a) postmarked within fifteen (15) days from the date of the letter from the State Bar mailing the arbitration packet in response to a timely request by the client as defined by Rule 8.3 of these rules, or
  - b) postmarked on or before the thirtieth (30th) day from receipt of the form entitled "Notice of Client's Right to Arbitration" given pursuant to Rule 4.0, whichever is later.

**RULE 9.0. Stay Of Proceedings.**

If an attorney, or the attorney's assignee commences an action to collect fees and/or costs in any court, the client may seek to stay the action by filing a copy of a request for arbitration on the approved State Bar form with the court, together with the original form entitled "Notice That Action Has Been Stayed," and by complying with any such additional requirements as the court may direct.

**ARTICLE III.  
STATE BAR PROGRAM**

**RULE 10.0. Presiding Arbitrator and Assistant Presiding Arbitrator; Representation of Parties.**

- 10.1 The Presiding Arbitrator supervises the arbitrators of the Fee Arbitration Department of the State Bar. S/he is responsible for ruling on matters as set forth in these rules and shall be a member of the State Bar Committee on Mandatory Fee Arbitration. The Presiding Arbitrator may designate one or more Assistant Presiding Arbitrators from members of the Fee Arbitration Department who shall act in place of the Presiding Arbitrator if s/he is absent or is unable to act.
- 10.2 Neither the Presiding Arbitrator, the Assistant Presiding Arbitrator(s), nor any member of the Committee on Mandatory Fee Arbitration shall represent any party in a matter arbitrated by the State Bar.

**RULE 11.0. Jurisdiction.**

- 11.1 The State Bar will accept a matter for arbitration if:
- a) there is no approved local bar association program; or
  - b) subject to Rules 11.2 and 11.3, a party declares under penalty of perjury that s/he cannot obtain a fair hearing in the local bar association program.
- The State Bar will waive jurisdiction if there is an approved local bar association program which is willing to accept consensual jurisdiction and the parties consent in writing to submit to such jurisdiction.
- 11.2 If a request for arbitration has been filed with the local bar and a party to the arbitration requests removal under subsection 11.1(b), above, the request for removal shall not be granted unless:
- a) the removing party postmarks the completed arbitration request on the approved State Bar form either:
    - 1) within fifteen (15) days after the State Bar's written decision concerning the request for removal has been mailed; or,
    - 2) within fifteen (15) days after the State Bar has mailed the arbitration packet to the removing party, whichever is later; and
  - b) the removing party pays the State Bar's filing fee or secures a waiver of that fee; and
  - c) the State Bar determines that it has jurisdiction over the subject matter and the parties.

The removing party must provide all additional information requested by the State Bar within the time limits set by the State Bar.

11.3 The Presiding Arbitrator shall deny a request for removal if:

- a) the other parties to the local bar's arbitration, or the local bar itself, would be prejudiced by removal, and such prejudice outweighs the allegations by the removing party supporting the claim that the party cannot obtain a fair hearing through the local bar's program; or
- b) the removing party's participation in or conduct during the course of the arbitration proceedings before the local bar is clearly inconsistent with a bona fide belief by the responding party that the party cannot obtain a fair hearing in that forum; or
- c) the removing party has waived any claim that the party cannot obtain a fair hearing before the local bar's arbitration program.

**RULE 12.0. Determination Of Jurisdiction.**

The State Bar shall reject any request for arbitration when it is clear from the face of the request that the provisions of the State Bar Act, Article 13, have not been met.

Within fifteen (15) days from mailing of notice that jurisdiction has not been accepted a party may file a written request for reconsideration. The Presiding Arbitrator shall rule on the request for reconsideration.

For good cause, the Presiding Arbitrator may assign the matter to a hearing panel to take evidence and make a determination of whether jurisdiction should be accepted.

There is no appeal of the Presiding Arbitrator's decision.

**RULE 13.0. Venue.**

A fee dispute will be heard in the county in which the majority of the legal services were performed.

For good cause shown, the Presiding Arbitrator may order that venue be moved to another county. A request for change of venue must be mailed to the State Bar no later than fifteen (15) days after mailing of the request for arbitration, if the request is by the client, or no later than fifteen (15) days after service of the request for arbitration, if the request is by the attorney. The order of the Presiding Arbitrator shall be final.

**RULE 14.0. Effect Of Time Requirements.**

The State Bar shall not lose jurisdiction, nor shall any arbitration be dismissed or any award modified in any way, solely because of the State Bar's failure to comply with time requirements as set forth in these Rules.

**ARTICLE IV.  
INITIATION OF ARBITRATION PROCEEDING**

**RULE 15.0. Request For Arbitration.**

15.1 Arbitration is initiated by filing with the State Bar of California a written "Request For Arbitration" on the approved State Bar form and paying the appropriate filing fee as established by the State Bar. Service of the request on the other party shall be made by the State Bar.

15.2 At the time of service of the request on the attorney, the State Bar shall also serve a copy of the approved State Bar "Notice of Attorney Responsibility" form.

15.3 The party requesting arbitration may amend the request up to fifteen (15) days after mailing it to the State Bar, unless a request for clarification is made by the State Bar. Thereafter, it may be amended only with the approval of the Presiding Arbitrator or by the Panel Chair, if a notice of assignment of the hearing panel has been served on the parties.

15.4 For good cause shown, the client may include, as a party to the arbitration, any person who is not the client of the attorney but who may be liable for or entitled to a refund of the attorney's fees and/or costs. The request for arbitration must be signed by the client and any other party included by the client.

**RULE 16.0. Request For Filing Fee Waiver.**

Each party seeking arbitration may file with the State Bar an application for a filing fee waiver on the approved State Bar form. For good cause shown, the Presiding Arbitrator may grant or deny the filing fee waiver or order a reduced fee. Filing fee waivers shall not be granted to business entities, including partnerships and corporations. The order of the Presiding Arbitrator shall be final.

**RULE 17.0. Response To Request For Arbitration.**

17.1 The attorney's reply to a Request for Arbitration, together with any response to the issue of the attorney's responsibility for any award that refunds fees and/or costs to the client, shall be filed within thirty (30) days of the service of the request, unless an extension of time to reply is obtained from the Panel Chair or the Presiding Arbitrator if no panel has yet been appointed.

17.2 If the attorney seeks arbitration, arbitration shall proceed only if the client files a written consent within thirty (30) days of service of the request, unless the attorney is seeking removal from a local bar program under rule 11.2 of a matter in which the client has requested arbitration or has consented to an attorney's request for arbitration.

17.3 All Consents and Replies shall be on the approved State Bar forms and filed with the State Bar.

**RULE 18.0. Return Of Original Documents.**

Except upon order of the Presiding Arbitrator, immediately upon receipt of a request for arbitration, attorney's reply or other document submitted to the State Bar in connection with the arbitration proceeding, the State Bar shall remove and photocopy any attached original material. The originals shall be returned to the party who submitted them and copies attached to the document submitted.

**RULE 19.0. Settlement Of Disputes; Withdrawal From Arbitration.**

19.1 Upon confirmation that a dispute has been settled, the matter shall be dismissed by the State Bar in the absence of an assigned hearing panel, or by the panel if a notice of assignment of the hearing panel has been served on the parties.

19.2 If the client wishes to withdraw from a binding arbitration and the matter has not been settled, all parties must agree to the matter being withdrawn. If the arbitration is non-binding, or after reasonable confirmation that all parties agree to the withdrawal, and for good cause shown, the matter shall be dismissed as set forth in subsection 19.1 above.

19.3 If the matter is settled before the request is accepted for filing by the State Bar, one-hundred percent (100%) of the filing fee shall be refunded to the party who paid it. If the matter is settled after filing but before assignment of a panel, the State Bar shall retain fifty percent (50%) of the filing fee paid up to a maximum of one-hundred dollars (\$100). After assignment of a hearing panel, if written notice of the settlement is received by the State Bar at least twenty-four (24) hours prior to the scheduled hearing, the State Bar will retain fifty percent (50%) of the filing fee up to a maximum of five-hundred dollars (\$500). The remaining fee shall be refunded to the party who paid it.

#### **RULE 20.0. Consolidations.**

The Presiding Arbitrator shall rule on all written requests to consolidate two (2) or more separate arbitration requests.

### **ARTICLE V. PANELS**

#### **RULE 21.0. Appointment Of Panel.**

21.1 For each dispute a panel shall be assigned by the Director from the State Bar pool of arbitrators. A panel shall consist of one (1) attorney arbitrator if the amount in dispute is ten-thousand dollars (\$10,000.00) or less and three (3) arbitrators if the amount in dispute is more than ten-thousand dollars (\$10,000.00), one of whom shall be a public (non-lawyer) member. An attorney arbitrator shall be designated as Panel Chair. If the amount in dispute is more than ten-thousand dollars (\$10,000.00), the parties may agree to have the matter heard by a single arbitrator. Any vacancy, by way of disqualification or inability to serve, may be filled by the Director.

21.2 Upon the client's request, the Director shall assign a sole arbitrator, or in the case of a three (3) person panel, one of the attorney arbitrators, whose area of practice is civil or criminal law. Any such designation made by the client shall be of an arbitrator who practices in the same area of law as was involved in the matter for which the attorney was retained by the client. Such a request must be submitted by the client at the time the written "Request for Arbitration" on the approved State Bar form is submitted to the State Bar.

21.3 If a fee dispute involves five-hundred dollars (\$500) or less, the arbitration shall be decided by the Presiding Arbitrator, or in his or her discretion, an Assistant Presiding Arbitrator. Each party shall submit all supporting documents and a complete statement of the reasons for the dispute, and/or response under penalty of perjury; the client shall do so at the time of the submission of the request or consent to arbitrate, the attorney at the time of the response or request to arbitrate. Each party will have thirty (30) days from the date of service of the

initial statement or response to reply. The record shall thereafter be forwarded to the Presiding Arbitrator or Assistant Presiding Arbitrator for action, who may require either or both parties to submit additional information within thirty (30) days. The client shall be informed of this rule at the time of the State Bar's mailing to the client of the arbitration packet.

#### **RULE 22.0. Notice of Appointment Of Panel.**

A notice identifying the arbitrator(s) who will hear the dispute shall be served on the parties within sixty (60) days after the completed arbitration request, including the filing fee or order granting a request for waiver of fee, and response have been received. If no response is received, said notice will be served within sixty (60) days of the date on which the time to file the response expired.

#### **RULE 23.0. Challenge-Disqualification Of Arbitrator(s).**

Each party may disqualify one arbitrator without cause and shall have unlimited challenges for cause. Any disqualification or challenge of an arbitrator shall be ineffective unless made in writing and served on the State Bar within fifteen (15) days of the service of the "Notice of Assignment of Panel" or substitute arbitrator(s) if there is a disqualification or allowed challenge. An arbitrator who believes that s/he cannot render a fair and impartial decision or who believes that there is an appearance that s/he cannot render a fair and impartial decision, shall disqualify him/herself or shall accede to a reasonable challenge. If an arbitrator does not disqualify him/herself, the challenge shall be decided by the Presiding Arbitrator.

#### **RULE 24.0. Discharge Of Arbitrator Or Panel.**

The Presiding Arbitrator shall have the authority to discharge an arbitrator or panel of arbitrators from further proceedings on a matter whenever the Presiding Arbitrator, in his/her sole discretion, determines that there has been an unreasonable delay in performing duties under these rules, or for other good cause shown.

#### **RULE 24.5. Contacts With Arbitrators.**

A party or an attorney or representative acting for a party shall not directly or indirectly communicate with or argue to an arbitrator regarding a matter pending before such arbitrator, except:

- a) At scheduled hearings; or
- b) In writing with a copy to all other parties, and their respective counsel, if any, and the State Bar; or
- c) For the purpose of scheduling a hearing date or other administrative procedures; or
- d) For the purpose of obtaining the issuance of a subpoena under rule 29; or
- e) In an emergency.

## **ARTICLE VI. THE HEARING**

### **RULE 25.0. Confidentiality.**

- 25.1 All hearings shall be closed to the public. However, in the discretion of the panel and in the absence of any objections by the parties, witnesses and other such persons as may be necessary to the conduct of the hearing may be present during the hearing.
- 25.2 The panel, upon request of the client, shall permit the client to be accompanied by another person and may also permit additional persons to attend. Any such person shall be subject to the confidentiality of the arbitration proceedings.
- 25.3 The arbitration award is public; the arbitration case file, including the request, reply, exhibits and transcripts, remains confidential.

### **RULE 26.0. Waiver Of Personal Appearance.**

- 26.1 Any party may waive personal appearance and submit to the panel testimony and exhibits by written declaration under penalty of perjury.
- 26.2 Any party unable to attend a hearing may designate a lawyer or non-lawyer representative.
- 26.3 A waiver of appearance and/or designation of a representative and the submission of testimony by written declaration pursuant to this rule shall be filed with the State Bar at least ten (10) days prior to the hearing.

### **RULE 27.0. Death Or Incompetency Of A Party.**

In the event of death or incompetency of a party, the personal representative of the deceased party or the guardian or conservator of the incompetent may be substituted.

### **RULE 28.0. Discovery.**

No discovery is allowable except as specifically set forth in these rules.

### **RULE 29.0. Subpoenas.**

The Panel Chair shall, for good cause shown, issue subpoenas and/or subpoenas duces tecum at the request of a party. The State Bar shall mail the subpoenas to the requesting party who shall be responsible for obtaining the Panel Chair's signature and for service of the subpoenas. Any request for subpoenas must be received by the State Bar no later than ten (10) days before the scheduled hearing date. The party requesting subpoenas will be responsible for any witness fees and costs.

### **RULE 30.0. Commencement Of Hearing; Notice; Attendance.**

- 30.1 The hearing shall commence within forty-five (45) days after service of the "Notice of Assignment of Panel," unless there has been a disqualification or allowed challenge, in which case there shall be a fifteen (15) day extension from the date of the assignment of replacement member(s). Upon stipulation or application to the Panel Chair, the matter may be adjourned or continued for good cause shown except in the instance where the adjournment or continuance is for thirty (30) days or more

in which case the adjournment or continuance must be decided by the Presiding Arbitrator.

- 30.2 The panel shall serve written notice of hearing on each party at the address as shown in the "Notice of Assignment of Panel" and the State Bar, within fifteen (15) days of its assignment and at least fifteen (15) days prior to the hearing date. Appearance by a party at a scheduled hearing shall constitute waiver by said party of any deficiency with respect to the giving of "Notice of Hearing." Notwithstanding failure of either party to attend, the hearing shall proceed as scheduled and a decision made on the basis of evidence.
- 30.3 An award shall not be made against a party solely because of the party's absence. The panel shall require the party who is present to submit such evidence as may be required to support the making of an award.
- 30.4 An award may be made in favor of a party who is absent if the evidence so warrants. If neither party appears, the panel may terminate the arbitration by making an award that neither party is entitled to any relief.
- 30.5 If one of the panel members fails to appear, upon written stipulation of the parties, the hearing may proceed with the panel chair acting as the sole arbitrator. Under no circumstances will the hearing proceed with two (2) arbitrators.

### **RULE 31.0. Stipulations Encouraged.**

Agreements between the parties as to issues not in dispute and the voluntary exchange of documents prior to the hearing are encouraged.

### **RULE 32.0. Oaths.**

All testimony shall be given under oath or affirmation to be administered by the Panel Chair.

### **RULE 33.0. Evidence.**

Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule to the contrary.

### **RULE 34.0. Manner Of Proof.**

The parties shall present their proof in a manner determined by the panel.

### **RULE 35.0. Interpreter.**

Any party may provide for the attendance of a person to interpret at that party's expense.

### **RULE 36.0. Transcripts.**

Any party may provide for the attendance of a certified shorthand reporter at that party's expense. Every party to the arbitration shall be entitled to a copy of said reporter's transcript of the testimony upon written request and payment of the expense thereof.

**ARTICLE VII.  
AWARD**

**RULE 37.0. Award.**

37.1 The award shall be made within fifteen (15) days of the close of the hearing in any matter heard by a sole arbitrator and within twenty-five (25) days of the close of the hearing in any matter heard by a three(3) member panel.

37.2 The award shall be in writing. It shall include a determination of all questions submitted to the panel, the decision of which is necessary in order to determine the controversy, including the name of the responsible attorney(s). Arbitrators are encouraged, where appropriate, to file findings of fact with their awards. In the discretion of the arbitrators, the award may also include findings as to the willfulness of any party's non-attendance at the hearing.

37.3 The award shall include substantially the following language, as appropriate:

The arbitrators find that the total amount of fees and/or costs which should have been charged in this matter are: \$ \_\_\_\_\_

Of which client is found to have paid: \$ \_\_\_\_\_

In addition, the fee arbitration filing fee shall be allocated:

Client: \$ \_\_\_\_\_  
Attorney: \$ \_\_\_\_\_

For a net amount of: \$ \_\_\_\_\_

Accordingly, the following award is made:

a) Client, \_\_\_\_\_ (name) \_\_\_\_\_, shall pay attorney, \_\_\_\_\_ (name) \_\_\_\_\_: \$ \_\_\_\_\_

**OR**

b) Attorney, \_\_\_\_\_ (name) \_\_\_\_\_, shall pay client, \_\_\_\_\_ (name) \_\_\_\_\_: \$ \_\_\_\_\_

**OR**

c) Nothing further shall be paid by either attorney or client.

37.4 The award may include an award of unearned fees and/or costs previously paid to the attorney.

37.5 Whenever there are three (3) arbitrators, a majority vote shall be sufficient for all decisions of the arbitrators, including the award.

37.6 Evidence relating to claims of malpractice and professional misconduct shall be admissible, but only to the extent that those claims bear upon the fees and/or

costs to which the attorney is entitled. The panel shall not award affirmative relief, in the form of damages or offset or otherwise, therefor.

37.7 The award shall be signed by the arbitrators concurring therein.

37.8 The award may include an allocation of the filing fee and any fee paid by the client for filing a stay with the court, however, it shall not include an award for any other costs of the arbitration, including attorneys fees resulting from the arbitration proceeding.

37.9 The panel shall forward the original and four (4) copies of the signed award to the State Bar, which shall serve a copy of the award by mail on each party together with a notice of post-arbitration rights approved by the Board of Governors. The panel shall return all exhibits and documents to the parties who submitted them.

**RULE 38.0. Correction Of Award By Arbitrator(s).**

The arbitrators may correct the award only on the grounds set forth in Code of Civil Procedure section 1286.6 (a) and (c), and under the procedures set forth in Code of Civil Procedure section 1284. An application for such a correction does not extend the deadline for seeking a civil trial after an award is rendered, and the award will automatically become binding thirty (30) days after it is mailed to the parties.

**ARTICLE VIII.  
ENFORCEMENT OF THE ARBITRATION AWARD**

**RULE 39.0. Purpose.**

In any fee arbitration conducted by the State Bar or an approved mandatory fee arbitration program in which the client is awarded a refund of previously paid fees and/or costs, the client may request State Bar assistance if the attorney has not timely complied with that award as set forth below. This article shall apply to any arbitration in which a written request was received on or after January 1, 1994.

**RULE 40.0. Request For Enforcement.**

40.1 No less than one-hundred (100) days or more than four (4) years after the service of a signed copy of the award in any arbitration conducted by the State Bar or State Bar approved mandatory fee arbitration program, or from the date of a final judgment, the client may request that the State Bar enforce a binding award that includes an award of previously paid fees and/or costs to that client. The request shall be made on the approved State Bar form and may include all parties to the arbitration who were included in the original arbitration proceeding and who were awarded a refund of fees and/or costs.

40.2 Prior to making such request, however, the client shall make reasonable efforts to contact the attorney to arrange for payment of the award, including, at a minimum, mailing to the attorney a written request for payment. Proof of such mailing may be required before the State Bar initiates an enforcement proceeding against the attorney.

40.3 The client's request for enforcement of the arbitration award shall be served on the attorney by the State Bar.

**RULE 41.0. Attorney's Response To Request For Enforcement.**

- 41.1 Within thirty (30) days from the date of service on the attorney of the request for enforcement of the award, the attorney shall:
- a) Provide satisfactory proof to the State Bar that the award has been complied with; or
  - b) Agree to a payment plan that is satisfactory to the client or the State Bar; or
  - c) Provide reasons why, under Business and Professions Code section 6203(d), the attorney should not comply with the award.
- 41.2 If no response is received, or the attorney has not provided a reason under Rule 41.1 why the award should not be enforced, the Presiding Arbitrator, or designee, shall file a motion with the State Bar Court to place the attorney on temporary inactive status.

**RULE 42.0. Payment Plans.**

- 42.1 If the attorney has made a proposal for a payment plan to comply with the arbitration award, the State Bar shall immediately transmit the proposed plan to the client who may accept the proposal.
- 42.2 If the payment plan is not accepted by the client, the Presiding Arbitrator, or designee, may
- a) determine that the plan is reasonable and may approve the plan; or
  - b) may order that the plan be rejected.
- 42.3 If the payment plan is approved by the client or the Presiding Arbitrator, or designee, the State Bar shall monitor the plan for compliance. If at any time the client advises the State Bar that the attorney has ceased to comply with the payment plan, and the attorney has not provided proof:
- a) of inability to pay the award under rule 43.1 below; or
  - b) that the payment plan has been complied with, the Presiding Arbitrator or designee shall file a motion with the State Bar Court to place the attorney on temporary inactive status.
- 42.4 Upon the submission of satisfactory proof that the payment plan has been completed and the award has been fully complied with, the State Bar shall close its file and notify the parties.

**RULE 43.0. Determination Of Attorney Responsibility/Inability To Pay.**

- 43.1 If the attorney believes that he or she is no longer personally responsible for payment of the award due to a change in circumstances since the arbitration hearing or does not have the financial means to comply, the attorney shall provide reasons for this belief in the response to the client's request for assistance.

- 43.2 If the attorney provides the name(s) of the other attorney(s) he or she believes is now responsible for the award, the State Bar shall serve on that attorney copies of the client's request for assistance and the first attorney's response. The other attorney(s) shall have twenty (20) days from the date of service to respond.
- 43.3 Any challenge to the attorney's responsibility or claim of inability to pay the award shall be considered by the Presiding Arbitrator, or designee. The Presiding Arbitrator or designee may hold a hearing or may require the parties to submit additional information.
- 43.4 The Presiding Arbitrator, or designee, shall order either:
- a) That due to the attorney's inability to pay the award, the file shall be closed; or
  - b) That one or all of the attorneys in the proceeding is responsible for the award; or
  - c) That the attorney(s) can afford to comply with the award; or
  - d) That the matter cannot be resolved under this article.
- 43.5 Any challenge to the Presiding Arbitrator's order requiring the attorney(s) to pay the award shall be considered by the State Bar Court. Any Presiding Arbitrator order closing the file shall be final.

**RULE 44.0. Motion To The State Bar Court To Place Attorney On Inactive Status.**

In any matter in which the Presiding Arbitrator, or designee, determines that the attorney has not

- a) agreed to a payment plan;
- b) proven an inability to pay the award;
- c) proven that he or she is not personally responsible for the award; or
- d) proven that he or she has complied with the payment plan,

the Presiding Arbitrator or designee may petition the State Bar Court to place the attorney on temporary inactive status. Such proceedings shall be governed by "The Rules of Procedure for State Bar Court Proceedings."

**RULE 45.0. Administrative Penalties/Costs.**

In any matter in which the attorney has failed to comply with a binding award, the Presiding Arbitrator or designee may require the attorney to pay administrative penalties. Penalties imposed shall not exceed twenty-percent (20%) of the amount awarded to the client or one-thousand dollars (\$1,000.00), whichever is greater.

In the event that the attorney does not pay the administrative penalties, that amount shall be added to the membership fee of the attorney for the next calendar year.

**ARTICLE IX.  
SERVICE; ADDRESS**

**RULE 46.0. Service.**

- 46.1 Unless otherwise specifically stated in these rules, service on the client shall be by personal delivery, by deposit in the United States mail, or by deposit in a business facility used for collection and processing of correspondence for mailing with the United States Postal Service pursuant to Code of Civil Procedure section 1013a(3), postage paid, addressed to the person on whom it is to be served, at his or her address as last given, on any document which has been filed in the arbitration. The client shall keep the State Bar advised of his/her current address.
- 46.2 Unless otherwise specifically stated in these rules, service on an individual attorney shall be at the latest address shown on the official membership records of the State Bar. If the fee dispute is with a law firm, service shall be on the address as shown in the request for arbitration form unless the law firm designates an attorney to be responsible for the arbitration, then service shall be on the designee's address shown on the official membership records of the State Bar. Service shall be in accordance with subsection 46.1 above.
- 46.3 If either party is represented by counsel, service shall be on the party as indicated in subsections 46.1 and 46.2 of this rule, and on the counsel at the latest address shown on the official membership records of the State Bar.
- 46.4 The service is complete at the time of deposit. The time for performing any act shall commence on the date service is complete and shall not be extended by reason of service by mail.
- 46.5 Where a facsimile transmission ("fax") is used to communicate with the State Bar or to file any document, it will not be considered received unless the State Bar also receives within five (5) days of the date of the transmission, the original of the faxed document.

**RULE 47.0. State Bar.**

Whenever these rules indicate that a copy of any form or other matter be sent to the State Bar, the item should be addressed as follows:

**State Bar of California  
Mandatory Fee Arbitration Program  
180 Howard Street, 6th Floor  
San Francisco, CA 94105-1639**